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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

314-636

No. 152

MINNIE KEYES, *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

W. GWYNN GARDINER,
JAMES M. EARNEST,
Woodward Building,
Washington, D. C.,
Attorneys for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Minnie Keyes, by her attorneys, W. Gwynn Gardiner and James M. Earnest, respectfully prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the District of Columbia, entered in the above entitled cause on March 10, 1941, (R. 58) affirming the judgment of the District Court of the United States for the District of Columbia, entered on May 23, 1940. (R. 43-44)

A. STATEMENT OF THE MATTER INVOLVED.

This is a proceeding *in rem* begun by the Attorney General of the United States, at the instance of the Alley Dwelling Authority, to condemn certain real estate in the District of Columbia, including two parcels owned by the petitioner, for the construction of dwellings for families and persons of low income. The action was commenced on April 6, 1940, by the filing of a petition for condemnation (R. 1-19); and on April 11, 1940, respondent filed a declaration of taking in the District Court, and deposited the money estimated to be just compensation for petitioner's said properties. (R. 30-31)

Respondent also on April 11, 1940, filed a petition for an order to fix the time within which and the terms upon which possession of the premises sought to be acquired by condemnation should be surrendered to it (R. 26-29); and the District Court on April 11, 1940, signed a rule to show cause, directed against the petitioner and other property owners in interest, requiring them to show cause on May 10, 1940, why the prayers of said petition should not be granted, and why they should not be required to surrender possession of their respective properties to the respondent on or before May 17, 1940. (R. 33-35)

Petitioner filed an answer to said petition (R. 35-41); and likewise filed an answer to said rule to show cause. (R. 41) The matter came on for hearing on the return day of said rule to show cause; and the District Court, finding that the allegations in the petitioner's said answers were insufficient as a matter of law, and further that petitioner was not entitled to offer any evidence in support of the allegations contained in her said answers, thereupon entered an order on May 23, 1940, granting the prayers of said petition, and requiring and directing petitioner to forthwith surrender possession of her said properties to the respondent. (R. 43-44)

On June 16, 1940, petitioner filed a petition in the United States Court of Appeals for the District of Columbia for

allowance of a special appeal from the order of the District Court entered on May 23, 1940, which was allowed by said court on June 3, 1940 (R. 44-45) and said court affirmed the action of the District Court.

B. QUESTIONS PRESENTED AND REASONS FOR THE ALLOWANCE OF THE WRIT.

1. The United States Court of Appeals for the District of Columbia held that there was statutory justification for the condemnation of petitioner's property under the District of Columbia Alley Dwelling Act. In so holding, the Court failed to give a proper interpretation and construction of said act.

2. The effect of the decision of the United States Court of Appeals is that under the District of Columbia Alley Dwelling Act any privately owned property may be condemned for the construction thereon of dwellings for families and persons of low income, irrespective of where the property involved is located and the value thereof. In so holding, the Court failed to give proper effect to said Act, which only authorizes such condemnation in the interest of the public health, safety, morals and welfare, and then only where (1) the property is an alley property or situated within a square containing an alley or (2) where the property to be condemned is insanitary and unsafe and the project involves the elimination of unsafe and insanitary dwellings substantially equal in number to the number of newly constructed dwellings provided by the project.

3. Under the decision of the United States Court of Appeals petitioner is deprived of an opportunity to inquire into the facts and circumstances surrounding the legislative declarations contained in the District of Columbia Alley Dwelling Act, although the validity of said Act depends upon the truth of such declarations.

4. The action of respondent amounts to the confiscation of petitioner's property since the act relied upon is uncon-

stitutional in that it authorizes the condemnation of private property for other than public uses.

5. The question decided in this case by the United States Court of Appeals for the District of Columbia is of general importance, particularly in view of the fact that the respondent is proceeding with further and additional condemnation proceedings under the same circumstances and for the same purpose as here involved.

6. It is also apparent from the foregoing that the case presents a question of substance relating to the construction or application of the Federal Constitution, which, so far as the District of Columbia Alley Dwelling Act is concerned, has not been, but should be settled by this Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding that court to certify and to send to this Court for its review and determination on a day certain to be therein named a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 7743, Minnie Keyes, Appellant, vs. United States of America, Appellee; and that the said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

MINNIE KEYES.
By: W. GWYNN GARDINER.
JAMES M. EARNEST.
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Washington, D. C.,
Attorneys for Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I. OPINION BELOW.

There was no memorandum opinion of the District Court. The decision of the United States Court of Appeals for the District of Columbia (R. 5259) is not yet reported except in 69 W. L. R. 390.

II. JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered on March 10, 1941. No petition for re-hearing was filed, but petitioner made application for a stay of mandate, and on April 2, 1941, the said Court entered an order staying the issuance of a mandate for a period of thirty days (R. 60); and on May 9, 1941,

entered a further order staying the issuance of a mandate to and including June 8, 1941.

The jurisdiction of this Court is invoked pursuant to the provisions of Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and Paragraph (c) of Section 5, of Rule 38 of this court.

III. STATEMENT OF THE CASE.

The case has been fully stated under the heading "Statement of the Matter Involved" on pages 2 to 3, inclusive of the Petition for a Writ of Certiorari, which is hereby adopted and incorporated herein by reference.

IV. SPECIFICATION OF ERRORS.

The United States Court of Appeals for the District of Columbia erred:

1. In affirming the order entered herein by the District Court on May 23, 1940.

2. In granting the prayers of the petition for condemnation filed herein as against petitioner.

3. In making the rule to show cause returnable herein on May 10, 1940, absolute, and in requiring and directing the petitioner to forthwith surrender possession of her property here involved to the United States of America.

4. In holding that the allegations of the petitioner's answer to the petition for condemnation herein and to said rule to show cause were insufficient as a matter of law.

5. In holding that the petitioner's answer to said petition for condemnation and her answer to said rule to show cause do not raise any genuine issues of fact.

6. In holding that there is any statutory justification for the condemnation of petitioner's property here involved under the District of Columbia Alley Dwelling Act.

7. In refusing to hold that the aforesaid act is unconstitutional and void in that it authorizes the condemnation of private property for other than public use.

8. In not holding that the acquisition of petitioner's property here involved for a low rent housing project does not constitute a public use and that the operation of the housing project to be erected thereon by the Alley Dwelling Authority to the class of people contemplated does not constitute "a public use".

9. In not holding that the respondent is without power to exercise the right of eminent domain for the purpose of acquiring privately owned property for low rent housing projects.

V. SUMMARY OF ARGUMENT.

Point A—Petitioner's property not situated in alley or within a square containing an inhabited alley and cannot be condemned under District of Columbia Alley Dwelling Act.

Point B—Respondent cannot condemn petitioner's property for the purpose of constructing, operating, and maintaining a low rent housing project.

Point C—Petitioner can attack validity of District of Columbia Alley Dwelling Act by showing either that the declaration or existence of facts on which its validity depends was arrived at through error or mistake or in any event no longer obtain.

Point D—Petitioner clearly entitled to offer evidence in support of her answer.

Point E—The District of Columbia Alley Dwelling Act is void and unconstitutional in that it authorizes the condemnation of private property for other than public use.

VI. ARGUMENT.

Point A.—Petitioners' Property Not Situated in An Alley or Within a Square Containing an Inhabited Alley and Cannot be Condemned Under District of Columbia Alley Dwelling Act.

It is clear from a mere reading of the District of Columbia Alley Dwelling Act that it was the primary intention of Congress to discontinue the use of buildings in alleys as dwellings for human habitation; and to replat and develop squares containing inhabited alleys, in the interest of public health, safety, morals and welfare; and secondly, to provide decent, safe, adequate and sanitary housing accommodations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings in the administration of the Act.

This is the plain and natural interpretation which must be placed upon the Act because, after reciting certain declarations of legislative determination, and the evils which the Legislature intended to correct, it is provided that in order to remedy the conditions and evils as recited and to carry out the policy as declared, the President is authorized and empowered to acquire by purchase, gift, condemnation, or otherwise (1) any property situated in or adjacent to an inhabited alley; (2) any property within any square containing an inhabited alley, the acquisition of which is reasonably necessary for utilization by replatting, improvement, or otherwise, pursuant to the provisions of the Act; and (3) any property that may be necessary to provide decent, safe, adequate, and sanitary housing accommodations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings pursuant to the administration of the Act. This would seem so palpably plain as to admit of no argument.

In her answer filed herein petitioner alleges, and it is not denied, that her said property is not situated in or adjacent to any inhabited alley. (R. 39) She further alleges, and it likewise is not denied, that her said property is not within a square containing an inhabited alley. (R. 39) She further alleges that the acquisition of her property herein sought is unnecessary in order to provide decent, safe, adequate, and sanitary housing accommodations for persons who are to be deprived of habitation by reason of the instant condemnation proceeding. (R. 39, 40) How then, on the basis of the present record, can it be urged with any degree of logic that there is any statutory justification for the condemnation of petitioner's property under Title I of the act. The answer would seem quite clear that there is none.

Point B.—Respondent Cannot Condemn Petitioner's Property for the Purpose of Constructing, Operating, and Maintaining a Low Rent Housing Project.

The lower court's decision is buttressed upon the proposition that respondent is proceeding under Title II of the Act, which provides in substance that in addition to its other powers the Authority designated by the President for the purpose of the administration of the Act shall have the power to acquire sites for and to prepare, carry out, acquire, lease, and operate housing projects as defined in said Act, and to construct or provide for the construction, improvement, and the like, of any such housing project in the District of Columbia. The Act itself defines "housing project" to mean any low rent housing as defined in the United States Housing Act of 1937, c. 8, Title 42, U. S. Code. The United States Housing Act of 1937, after declaring it to be the policy of the United States to promote the general welfare of the nation, by employing its funds and credit as provided in said Act, to alleviate present and recurring unemployment and to remedy the unsafe and

insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, then proceeds to define low rent housing and prescribe means whereby loans or contributions may be made for the realization of the same.

It provides among other things that the authority appointed for the purpose of the administration of the Act may make loans to public housing agencies to assist the development, acquisition, or administration of low rent housing or slum clearance projects by such agencies. It further provides that the authority may make either annual contributions to public housing agencies or, as an alternative method of assistance, may make capital grants. Significantly, however, it provides that no capital grant for the development of any low rent housing or slum clearance project involving the *construction of new dwellings* may be made unless the project includes the *elimination* by demolition, condemnation, and effective closing, or the compulsory repair or improvement of *unsafe or insanitary dwellings* situated in the locality or metropolitan area substantially *equal in number* to the number of newly constructed dwelling units provided by the project. It does provide that such elimination may, in the discretion of the authority, be deferred where the shortage of decent, safe, or sanitary housing available to families of low income is so acute as to force dangerous over-crowding of such families.

As shown by paragraph three of the petition for condemnation (R. 5, 6) the United States Housing Authority entered into a contract with the District of Columbia Alley Dwelling Authority by which it has agreed to lend the Alley Dwelling Authority the sum of $6,600,000 for the acquisition of sites for the construction, operation, and management of low rent housing projects in the District of Columbia. Hence it is without dispute that the low rent housing project as herein contemplated involves the construction of new dwellings. The difficulty is, however, that

there is no showing made by respondent that the other statutory requirements have been met. *There is no showing that petitioner's property is either unsafe or unsanitary.* There is no showing that elimination of unsafe and insanitary dwellings located in the District of Columbia substantially *equal in number* to the number of newly constructed dwelling units will result from the construction of the proposed low rent housing project.

As shown by paragraph twelve of her answer (R. 39) petitioner's property is improved by a two story brick house, having both gas and electricity. The lot on which the house is built contains 1,525 square feet. The house has a frontage of seventeen feet and there are one hundred three feet from the front of the house to the rear of the lot. The property is located at approximately the middle of the block on L Street and extends back to a vacant or unoccupied piece of ground which has never been graded to the street level. It is a desirable property and petitioner has enjoyed a good rental experience. Considering the record as a whole, therefore, it would seem that these allegations contained in petitioner's answer clearly negative the idea of a finding that her house is either unsafe or insanitary. Hence, the petition cannot properly serve as a basis for this proceeding.

In its opinion the United States Court of Appeals for the District of Columbia held in effect that Title II of the Act vested in the Authority power to condemn sites for low cost housing projects in addition to and wholly independent of the provisions of Title I of the Act; that moreover the acquisition of the property is to be made with the proceeds of a loan to be granted by the United States Housing Authority under Section 9 of the Act, which imposes no condition that there be the demolition of an equivalent number of unsafe or insanitary dwellings. The fallacy of the Court's opinion in this regard is readily apparent because Sections 9, 10 and 11 of the Act are all related; and it would seem clear that the type of loans referred to in Sec-

tion 9 of the Act are merely amplified in Sections 10 and 11. Hence the requirement that there be a demolition of an equivalent number of unsafe or insanitary dwellings as a condition to the granting of the subsidies under Sections 10 and 11 must be met. But there is no showing according to this record that such requirements have been complied with. Aside and apart from this consideration it is equally apparent that the Court has erroneously construed Section 202 of Title II of the District of Columbia Alley Dwelling Act. Such provision does not give the authority power to condemn privately owned property irrespective of where located or the value thereof. Reading the Act in its entirety and construing all of the provisions together, it would seem clear that the primary intention of Congress was the elimination of slums and alley dwellings in the interest of public health and morals. Unless it can be said, therefore, that a property is a slum property or is unsafe and insanitary there is no statutory justification for the condemnation of petitioner's property.

Point C.—Petitioner Can Attack Validity of District of Columbia Alley Dwelling Act by Showing Either that the Declaration or Existence of Facts on Which Its Validity Depends Were Arrived at Through Mistake or Error or in Any Event No Longer Obtain.

In petitioner's answer a direct challenge is made upon the validity of the District of Columbia Alley Dwelling Act on which respondent relies as the basis of this proceeding. (R. 38) In the Act Congress has found and determined that the use of buildings in alleys as dwellings for human habitation is injurious to the public health, safety, morals and welfare. It is then declared to be the policy of the United States to protect and to promote the welfare of the inhabitants of the District of Columbia by eliminating all such injurious conditions, and it further recites that since control by regulatory processes have proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress

necessary to acquire property in the District of Columbia to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of buildings in alleys and thereby to eliminate the communities in the inhabited alleys in said District, and to provide decent, safe, adequate and sanitary habitations for persons or families who would be deprived of habitation by reason of the demolition of buildings under the Act.

Petitioner alleges in her answer that the conditions existing in the District of Columbia with respect to the use of buildings in alleys as dwellings for human habitation were not injurious to the public health, safety, morals, and welfare at the time of the enactment of said Act; alleges further that the policy of the United States to protect and promote the welfare of the inhabitants of said District as recited in said Act was arrived at by mistake or error; alleges further that even if true at the time of the enactment of the Act the existence of the state of facts as recited by Congress have ceased to operate. She therefore contends that the Act, even if valid at the time of its enactment, has been rendered invalid by change of circumstances.

We are not unmindful of the rule that great respect is due to the declaration of the Legislature in matters of this kind in so far as they relate to present facts. Even so, a Court is not at liberty to refuse, as did the lower court, to inquire into the facts and circumstances surrounding the legislative determination when the validity of the law depends upon the truth of what is declared.

> *Block* v. *Hirsh*, 256 U. S. 135; 65 L. ed. 865,
> *Charles Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522; 67 L. ed. 1103,
> *Chastleton Corporation* v. *Sinclair*, 264 U. S. 543; 68 L. ed. 841.

Then, too, a law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed.

Perrin v. *U. S.*, 232 U. S. 478; 58 L. ed. 691,
Missouri v. *Chicago B. & Q. R. Co.*, 241 U. S. 533; 60 L. ed. 1148,
Newton v. *Consolidated Gas Co.*, 258 U. S. 165; 66 L. ed. 538,
Chastleton Corporation v. *Sinclair, supra.*

In *South Carolina State Highway Department* v. *Barnwell Brothers*, 303 U. S. 177; 82 L. ed. 734, this Court held that in reviewing a decision sustaining the validity of a regulatory statute, the Court examines the *whole record* in order to ascertain whether it is possible to see that the legislative choice is without rational basis, not merely to see if the findings of the Court below are supported by evidence, said in part as follows:

> "Since the adoption of one weight or width regulation, rather than another, is a legislative not a judicial choice, its constitutionality is not to be determined by weighing in the judicial scales the merits of the legislative choice and rejecting it if the *weight of evidence* presented in Court appears to favor a different statute. * * * Hence, in reviewing the present determination we examine the record, not to see whether the findings of the Court below are supported by evidence, but to ascertain upon the *whole record* whether it is possible to say that the legislative choice is without rational basis. * * * Not only does the record fail to exclude that possibility, but it shows affirmatively that there is adequate support for the legislative judgment." (Italics supplied)

It will be readily apparent from that case that the party who challenged the validity of the statute had an opportunity to present evidence in support of his contentions. Here petitioner was denied this right. Unless the plain allegations of her answer challenging the validity of the Act are to be ignored, as was done in the lower court, certainly it cannot be said that this record supports the legislative judgment. The only conclusion which can be reached on this record is that the legislative choice is without rational basis,

giving to petitioner's allegations in her answer attacking the Act, the merit and consideration that the circumstances warrant.

Point D.—Petitioner Clearly Entitled to Offer Evidence in Support of Her Answer.

In petitioner's answer she denies certain of the material allegations contained in the petition for condemnation, thereby raising genuine issues of fact. Under Title 25, c. 5, Sec. 100, 1929 D. C. Code, which section is invoked by respondent herein for jurisdictional purposes, it is provided that the lower court shall have full power to hear and determine *all issues of law and fact*. Under Sec. 106 of the same title it is provided in substance that if a party should fail to appear after due notice of the condemnation proceeding, he shall be deemed to have consented to the taking and condemnation of his land and shall be bound by all orders, judgments and decrees that may be entered in the proceeding.

Here, petitioner did appear and answer. Not only did she attack the constitutionality of the Act in question, but she likewise challenged its validity based upon allegations of fact, all in addition to raising genuine issues of fact by her denial of certain of the material allegations contained in said petition.

Clearly then the lower court in holding that petitioner's answer was insufficient as a mater of law and in denying her the opportunity to introduce evidence in support of her answer, has denied to her the constitutional privilege which she has of having a full hearing in the true sense of the word. By the Court's action she has been denied due process of law as secured to her under the Constitution.

In *Gilbert* v. *Sargent*, 57 App. D. C. 207, 19 F. (2d) 681, this Court held that in a suit to enjoin enforcement of certain orders of the Rent Commission the lower court committed error in excluding evidence of unreasonableness of rates, and that emergency validating the Food Control and the District of Columbia Rents Act had passed. This Court said in part as follows:

> "It follows accordingly that the plaintiff below was entitled to bring his suit in equity and therefore entitled to submit evidence showing that the rentals fixed by the Commission were unfair, unreasonable and confiscatory. The rejection of such evidence was error. Similarly the plaintiff was entitled to submit evidence to show that the emergency which existed at the passage of the original Act * * * had ceased prior to June 1, 1923, up to which time the lower court entered its decree for defendants for all excess payments made by them over the rates fixed by the Rent Commission."

In its decision the United States Court of Appeals for the District of Columbia has failed to give a proper interpretation to the decision of this court in *Pacific States Co.* v. *White*, 296 U. S. 176, 185. In that case the only requirement where legislative action is challenged is that the facts relied upon to rebut the presumption of constitutionality must be specifically set forth. It will be readily apparent from a cursory examination of petitioner's answer filed herein that the ultimate facts upon which she relies in support of her attack made on the Act that the declaration or existence of facts on which it depends were arrived at through mistake or error, or in any event no longer obtain, have been fully set forth. She was not required to plead her evidence.

Point E.—The District of Columbia Alley Dwelling Act is Void and Unconstitutional in that it Authorizes the Condemnation of Private Property for Other Than Public Use.

There is no constitutional provision expressly authorizing the Federal Government to exercise the power of eminent domain. It is nevertheless settled that this power belongs to the Federal Government as an attribute to its sovereignty.

> *Kohl* v. *U. S.*, 91 U. S. 367; 23 L. ed. 449,
> *Shoemaker* v. *U. S.*, 147 U. S. 282; 37 L. ed. 170.

Of more importance, however, is the fact that the right of eminent domain can only be exercised where the property is to be taken for a public use. Courts as a rule have adopted no judicial definition of a "public" as distinguished from a "private" purpose, and have left each case to be determined by its own peculiar circumstances. In the District of Columbia Alley Dwelling Act Congress apparently proceeded in the exercise of its police power over the District of Columbia. This would seem to necessarily follow because the provision for the compensated taking of alley property is preceded by an express declaration that it is done in the interest of the public health, safety, morals and welfare. Subject only to those prohibitions of the Constitution which act directly or by implication upon the Federal Government Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end.

Granting that all prior decisions dealing with condemnation proceedings are to be considered in the light of the powers possessed by the sovereign seeking to exercise the right, nevertheless it is submitted that the Federal Government cannot on the present record condemn Petitioner's property for the purpose of constructing a low cost housing project. This, in the essence, is what this case comes down to. If such a result as would obtain from the administration of the Act in question may be properly considered a public use then there is absolutely no limitation upon the power of the Federal Government to condemn any private property. In other words, it could condemn any private property which it could employ to an advantage to the public or a small portion thereof.

The taking of petitioner's property for the purpose of improving it and selling or leasing it to another, or for the purpose of reducing unemployment as set forth in the National Housing Act of 1937 cannot properly be said to be within the scope of the powers of the Federal Government.

Of particular pertinence here is the case of the *United States* v. *Certain Lands in the City of Louisville*, 78 F. (2d) 684, cert. granted 296 U. S. 567, dism'd 297 U. S. 726. In that case the Court held that the National Industrial Recovery Act, so far as it attempted to authorize the National Government to condemn private property for low cost housing and slum clearance projects and for the purpose of reducing unemployment was unconstitutional since such use was not a public use. The opinion of the Court is in part as follows:

> " * * * Thus in these and other cases involving state action the court dealt with the subject of public use as it pertained to the powers of the sovereign claiming the right to take. It must be similarly dealt with in the case at bar. As so considered with reference to the federal government, it does not, in our opinion, include the relief of unemployment as an end in itself or the construction of sanitary houses to sell or lease to low-salaried workers or residents of slum districts. The tearing down of the old buildings and the construction of new ones on the land here sought to be taken would create, it is true, a new resource for the employment of labor and capital. It is likewise true that the erection of new sanitary dwellings upon the property and the leasing or the selling of them at low prices would enable many residents of the community to improve their living conditions. It may be, too, that these group benefits, so far as they might affect the general public, would be beneficial. If, however, such a result thus attained is to be considered a public use for which the government may condemn private property, there would seem to be no reason why it could not condemn any private property which it could employ to an advantage to the public. There are perhaps many properties that the government could use for the benefit of selected groups. It might be, indeed, that by acquiring large sections of the farming parts of the country and leasing the land or selling it at low prices it could advance the interest of many citizens of the country, or that it could take over factories and other businesses and operate them upon plans more beneficial to the employees or the public, or even oper-

ate or sell them at a profit to the government to the relief of the taxpayers. The public interest that would thus be served, however, cannot, we think, be held to be a public use for which the government, in the exercise of its governmental functions, can take private property. The taking of one citizen's property for the purpose of improving it and selling or leasing it to another, or for the purpose of reducing unemployment, is not, in our opinion, within the scope of the powers of the federal government."

The reasoning of the above decision appears to be sound and unanswerable. It will not suffice for the Court in its opinion to attempt to distinguish this case from the case at bar on the theory that Congress by virtue of its plenary powers over the District of Columbia can nevertheless pass an act the operative effect of which is to confiscate petitioner's property. The undisputable facts are that the act as applied to petitioner's property is unconstitutional and void because it amounts to the taking of privately owned property for other than a public use. Her position in this regard is fortified by the fact that her property is not an alley property, nor is it in close proximity to any inhabited alley. It is not the unsafe, insanitary, or obnoxious type of property which Congress had in mind at the time of the enactment of the Act. Accordingly, to permit the decision of the United States Court of Appeals for the District of Columbia to stand would be giving to the Act an interpretation which the Congress never intended. While it is true that the opinion finds some support in the case cited in the decision of *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. (2d) 246, that decision was never reviewed by this Court and would seem to be at complete variance with other prior decisions of this Court.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be granted and this Honorable Court should review the decision of the United States Court of Appeals for the District of Columbia in this case, and finally reverse it.

MINNIE KEYES,
By: W. GWYNN GARDINER,
JAMES M. EARNEST,
Woodward Building,
Washington, D. C.,
Attorneys for Petitioner.

APPENDIX.

Statutes Involved.

The District of Columbia Alley Dwelling Act approved on June 12, 1934, as amended by the Act approved on June 25, 1938, 1929 D. C. Code, Title 25, c. 3, Sections 23 to 30(e) inclusive, reads in part as follows:

"Sec. 23. Alley Dwelling Law; power of President to purchase, condemn, etc., land and buildings to prevent alley dwellings.—

"(a) *It is hereby declared to be a matter of legislative determination* that the conditions existing in the District of Columbia with respect to the use of buildings in alleys as dwellings for human habitation are injurious to the public health, safety, morals, and welfare; *and it is hereby declared to be the policy of the United States* to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain in order to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of buildings in alleys, and thereby to eliminate the communities in the inhabited alleys in said District, and to provide decent, safe, adequate, and sanitary habitations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings under the terms of this title, and to prevent an acute shortage of decent, safe, adequate, and sanitary dwellings for persons of low income, and to carry out the policy declared in the Act approved May 18, 1918, as amended, of caring for the alley population in the District of Columbia, and to that end it is necessary to enact the provisions hereinafter set forth.

"(b) In order to remedy the conditions and evils hereinbefore recited and to carry out the policy hereinbefore declared, the President is hereby authorized and

empowered to acquire by purchase, gift, condemnation, or otherwise—

"(1) any land, building, or structures, or any interest therein, situated in or adjacent to any inhabited alley in the District of Columbia;

"(2) any land, buildings, or structures, or any interest therein, within any square containing an inhabited alley, the acquisition of which is reasonably necessary, for utilization, by replatting, improvement or otherwise, pursuant to the provisions of sections 23-30e of this title, of any property acquired under sub-paragraph (1) of this subsection; and

"(3) any other land, together with any structures that may be located thereon, in the District of Columbia that may be necessary to provide decent, safe, adequate, and sanitary housing accommodations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings pursuant to the provisions of this title.

* * * * * * * * *

"(d) The Authority is hereby authorized and empowered to lease, rent, maintain, equip, manage, exchange, sell, or convey any such lands, buildings, or structures acquired under this title, for such amounts and upon such terms and conditions as it may determine: *Provided*, That sales of real property shall be made at public sale to the highest responsible bidder on terms satisfactory to the Authority after advertising for three consecutive weeks in at least one daily newspaper of general circulation published in the District of Columbia; *Provided, however*, That the Authority may, without advertising, sell such property to a quasi-public institution or agency not organized or operated for private profit at not less than the cost of such property to the Authority, including improvements: *And provided further*, That if any such lands, buildings, or structures are required for the purpose of the United States or of the District of Columbia, they may be transferred thereto upon payment to the Authority of the reasonable value thereof.

* * * * * * * * *

"Sec. 24. Same; designation of 'the authority'; powers; approval of plans; condemnation proceedings.—

"(a) The President may designate for the purpose of carrying out the provisions of sections 23-30e of this title, such official or agency of the Government of the United States or of the District of Columbia (hereinafter referred to as 'the Authority') as in his judgment is deemed necessary or advantageous, and the Authority shall have or obtain all powers necessary or appropriate therefor, including the employment of necessary personal services; but (1) all plans for replatting and/or method of condemnation under the provisions of this chapter shall be submitted to and receive the written approval of the National Capital Park and Planning Commission and of the Board of Commissioners of the District of Columbia: *Provided, however*, That (a) failure of the National Capital Park and Planning Commission or of the Board of Commissioners of the District of Columbia to formally approve or disapprove in writing within sixty days after a plan has been submitted shall be equivalent to a formal approval, and (b) disapproval shall be accompanied by a written statement giving all the reasons for disapproval; and (2) any plan which shall involve action by any department, bureau, or agency of the United States or of the District of Columbia shall be made after consultation with such department, bureau, or agency.

"(b) In the event condemnation proceedings are required to carry out the provisions of sections 23-30e of this title the same shall be conducted in accordance with the provisions of sections 100-110o of this title.

* * * * * * * * *

"Sec. 25. Same; appropriation of funds; 'conversion of inhabited alley fund'; power of 'the Authority' to borrow money; total cost in any square.—

"(a) The President is hereby authorized, in his discretion, to make immediately available to the Authority for its lawful uses and as needed, from the allocation made from the appropriation to carry out the purposes of the National Industrial Recovery Act, contained in the Fourth Deficiency Act, fiscal year 1933, now carried under the title, 'National Industrial Recovery, Federal Emergency Administration of Public Works, Housing, 1933-1935', symbol 03/5666, not to exceed $500,000 of any amount thereof dedicated for low-cost housing and slum clearance projects in the District of

Columbia, to be set aside in the Treasury and be known as 'Conversion of inhabited alleys fund' (hereinafter referred to as the 'fund').

"(b) The Authority is hereby authorized and empowered to borrow such moneys from individuals or private corporations as may be secured by the property and assets acquired under the provisions of section 23-30e of this title, and such moneys, together with all receipts from sales, leases, or other sources, shall be deposited in the fund and shall be available for the purposes of sections 23-30e of this title. The Authority is hereby authorized and empowered to accept gifts of money from private sources; to borrow from the Treasury of the United States not to exceed $1,000,000 in the fiscal year ending June 30, 1939, and a like sum in each of the four succeeding fiscal years, upon such terms and conditions as the President may deem advisable, and appropriations for such purpose are hereby authorized out of the general fund of the Treasury: *Provided*, That the Authority shall be obligated for the payment of interest at the going Federal rate as defined in the United States Housing Act of 1937, chapter 8, Title 42, U. S. C. Sup. IV.

"(c) The fund shall be available annually in such amount as may be specified in the annual appropriation Acts.

"(d) The total amount paid for property or properties acquired, except by condemnation, in any square shall not exceed 30 per centum over and above the current assessed value of all the property or properties acquired, except by condemnation, in such square to carry out the provisions of sections 23-30e of this title.

* * * * * * * * *

"Sec. 26. Same; annual reports of the Authority; alley dwelling forbidden after July 1, 1944; construction or alteration of alley dwelling forbidden, penalty.—

"(a) The objects set forth in section 23 of title shall be accomplished as rapidly as feasible and to this end the Authority shall, in each annual report, set forth what it proposes to do during the next succeeding fiscal year.

"(b) On and after July 1, 1944, it *shall be unlawful to use or occupy any alley building or structure as a dwelling in the District of Columbia.*

"(c) *No alley dwelling shall be constructed in the District of Columbia, nor shall any building or structure be moved, altered, or converted for use as an alley dwelling.*

* * * * * * * * *

"Sec. 30a. Same: definitions.—As used in sections 30a-30e of this title. —

"(a) The term 'housing project' shall mean *any low-rent housing (as defined in the United States Housing Act of 1937, chapter 8, Title 42, U. S. Code)*, the development or administration of which is assisted by the United States Housing Authority.

"(b) The term 'development' shall mean any or all undertakings necessary for planning, financing (including payment of carrying charges), land acquisition, demolition, construction, or equipment, in connection with a housing project, but not beyond the point of physical completion. (June 12, 1934, 48 Stat. 930, c. 465; June 25, 1938, 52 Stat. 1188, c. 691, Sec. 5.)

"Sec. 30b. Same; additional powers of Authority.—In addition to its other powers, the Authority shall have the power to acquire sites for and to prepare, carry out, acquire, lease, and operate housing projects, as defined in section 30a of this title, and to construct or provide for the construction, reconstruction, improvement, alteration, or repair of any such housing project, or any part thereof, in the District of Columbia." (Italics supplied)

The United States Housing Act of 1937, Title 42, c. 8, U. S. C. reads in part as follows:

"Sec. 1401. Declaration of policy. *It is hereby declared to be the policy of the United States* to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation. (Sept. 1, 1937, c. 896, Sec. 1, 50 Stat. 888.)

"Sec. 1402. Definitions. When used in this chapter—

"(1) Low-rent housing. The term 'low-rent housing' means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing as defined in this chapter shall be available solely for families whose net income at the time of admission does not exceed five times the rental (including the value or cost to them of heat, light, water, and cooking fuel) of the dwellings to be furnished such families, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one.

"(2) Families of low income. The term 'families of low income' means families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use.

"(3) Slum. The term 'slum' means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health or morals.

"(4) Slum clearance. The term 'slum clearance' means the demolition and removal of buildings from any slum area.

* * * * * * * * *

"(11) Public housing agency. The term 'public housing agency' means any State, county, municipality, or other governmental entity or public body (excluding the Authority), which is authorized to engage in the development or administration of low-rent housing or slum clearance."

"Sec. 1403. United States Housing Authority—(a) Creation. There is hereby created in the Department of the Interior and under the general supervision of the

Secretary thereof a body corporate of perpetual duration to be known as the United States Housing Authority, which shall be an agency and instrumentality of the United States."

"Sec. 1409. Loans for low-rent-housing and slum-clearance projects. The Authority may make loans to public-housing agencies to assist the development, acquisition, or administration of low-rent housing or slum-clearance projects by such agencies * * *."

"Sec. 1410. Annual contributions in assistance of low rentals—(a) Authorization. The Authority may make annual contributions to public housing agencies to assist in achieving and maintaining the low-rent character of their housing projects. * * * *Provided*, That no annual contributions shall be made, and the Authority shall enter into no contract guaranteeing any annual contribution in connection with the development of any low-rent-housing or slum-clearance project involving the construction of new dwellings, *unless the project includes the elimination by demolition, condemnation, and effective closing, or the compulsory repair or improvement of unsafe or insanitary dwellings situated in the locality or metropolitan area, substantially equal in number to the number of newly constructed dwellings provided by the project; except that such elimination may, in the discretion of the Authority, be deferred in any locality or metropolitan area where the shortage of decent, safe, or sanitary housing available to families of low income is so acute, as to force dangerous overcrowding of such families.*"

"Sec. 1411. Capital grants in assistance of low rentals—(a) Authorization. As an alternative method of assistance to that provided in section 1410, when any public housing agency so requests and demonstrates to the satisfaction of the Authority that such alternative method is better suited to the purpose of achieving and maintaining low rentals and to the other purposes of this chapter, capital grants may be made to such agency for such purposes. The capital grants thus made for any low-rent-housing or slum-clearance project shall be paid in connection with its development or acquisition, and shall be strictly limited to the amounts necessary,

in the determination of the Authority, to assure its low-rent character: *Provided, however, That no capital grant shall be made for the development of any low-rent-housing or slum-clearance project involving the construction of new dwellings, unless the project includes the elimination by demolition, condemnation, and effective closing, or the compulsory repair or improvement of unsafe or insanitary dwellings situated in the locality or metropolitan area, substantially equal in number to the number of newly constructed dwelling units provided by the project;* except that such elimination may, in the discretion of the Authority, be deferred in any locality or metropolitan area where the shortage of decent, safe, or sanitary housing available to families of low income is so acute as to force dangerous overcrowding of such families." (Italics supplied)

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 152

MINNIE KEYES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The district court did not deliver an opinion. The opinion of the Court of Appeals (R. 52–59) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was entered on March 10, 1941 (R. 59). The petition for a writ of certiorari was filed on June 10, 1941. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States may condemn petitioner's property for the purpose of constructing a low-rent housing project in the District of Columbia.

STATUTES INVOLVED

The pertinent provisions of the Act of June 12, 1934, c. 465, 48 Stat. 930, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186; the United States Housing Act of September 1, 1937, c. 896, 50 Stat. 888, 42 U. S. C., Supp. V, sec. 1401; and the Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C., sec. 361, are set out in the Appendix.

STATEMENT

This condemnation proceeding was instituted by the United States, upon the request of the Alley Dwelling Authority of the District of Columbia, for the purpose of acquiring petitioner's property for a low-rent housing project in the District of Columbia (R. 1–19).

Title I of the Act of June 12, 1934, c. 465, 48 Stat. 930, provides that the District of Columbia Alley Dwelling Authority may demolish alley dwellings and replace them with suitable low-cost dwellings.

Title II of that Act, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186–1189, provides (sec. 203) that the Authority "shall be considered a public housing agency within the meaning of,

and to carry out the purposes of, the United States Housing Act of 1937." The Authority is authorized (sec. 203) to accept loans, contributions and grants from the United States Housing Authority. It is also empowered (sec. 202) "to acquire sites for" and to construct low-rent housing projects in the District of Columbia. This power is "In addition to" (sec. 202) the Authority's powers under Title I.

The Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C. sec. 361, provides that whenever a Government officer or agency "shall be, authorized by law to acquire real property in the District of Columbia * * *, such acquiring authority shall be, and hereby is, authorized to acquire the same * * * by condemnation."

The Government's petition recites (R. 2–4, 7) that the proceeding is brought pursuant to the above mentioned statutes and alleges (R. 5–6) that the United States Housing Authority has agreed to lend the necessary funds to the District of Columbia Authority.

Petitioner filed an answer which assumed that the proceeding was brought, not under Title II of the 1934 Act, as amended, but instead under Title I of that Act (R. 35–36, 37–38). She attacked the declarations of Congressional policy and legislative findings contained in section 1 of Title I (R. 38–39). She also alleged facts designed to show that her property was not of the character author-

ized to be acquired under Title I (R. 39–40). Her final defense was that the Federal Government could not constitutionally take her property by eminent domain for the purpose of constructing a low-rent housing project (R. 40).

The district court upheld the Government's right to condemn (R. 43–44) and the court of appeals affirmed (R. 59).

ARGUMENT

1. The Court of Appeals held (R. 58–59) that the United States has constitutional power to condemn petitioner's property, which is located in the District of Columbia, for the purpose of constructing a low-rent housing project. This holding is plainly correct. In legislating for the District of Columbia Congress enjoys the same powers as do the legislatures within the states [1] and it is settle that a state legislature may validly provide for low-rent housing projects and authorize the condemnation of land for that purpose.[2] To support her contention (Pet. 16–19) that the Federal Government cannot take her property by eminent domain petitioner relies solely on *United States* v. *Certain Lands in the City of Louisville*, 78 F. 2d 684

[1] U. S. Const., Art. I, sec. 8, cl. 17; *Shoemaker* v. *United States*, 147 U. S. 282, 298; *Parsons* v. *District of Columbia*, 170 U. S. 45, 52; *O'Donoghue* v. *United States*, 289 U. S. 516, 539; *Neild* v. *District of Columbia*, 110 F. 2d 246, 249–251 (App. D. C.)

[2] The authorities, from 16 States, are collected in the opinion of the court of appeals (R. 58–59).

(C. C. A. 6) certiorari granted, 296 U. S. 567, dismissed on motion of the petitioner, 297 U. S. 726. Whatever the merits of that decision, it has, as the court below pointed out (R. 58), no application here. It involved proceedings brought by the United States to condemn land for housing purposes in a state, and presented a question only as to the scope of the federal powers granted by the welfare clause.

2. Petitioner also urges (Pet. 8–15) that there is no statute authorizing the condemnation of her property. As the record discloses (R. 2–4, 22–24), this proceeding is brought pursuant to Title II of the Act of June 12, 1934, c. 465, 48 Stat. 930, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186 (pp. 10–11, *infra*). It is clear that the condemnation of petitioner's property is authorized by Title II and by the Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C. sec. 361. Section 202 of Title II (pp. 10–11, *infra*) empowers the District of Columbia Authority to "acquire sites for" the construction of low-rent housing projects. The 1929 Act (p. 18, *infra*) provides that whenever a government officer or agency "shall be authorized by law to acquire real property in the District of Columbia * * *, such acquiring authority shall be, and hereby is, authorized to acquire the same * * * by condemnation."

Since this proceeding is brought under Title II, it is not necessary to consider petitioner's con-

tention (Pet. 8–9) that it is not authorized by Title I (pp. 8–10, *infra*) of the Act of June 12, 1934, as amended by the Act of June 25, 1938. It is likewise unnecessary to deal with the argument (Pet. 12–13) that petitioner has been denied an opportunity to attack the legislative findings and declaration of Congressional policy set forth in section 1 of Title I. Those findings, as the court below held (R. 57) are not pertinent to a proceeding under Title II.

There is no merit in petitioner's contention (Pet. 9–12) that the power conferred by Title II and by the Act of March 1, 1929 is limited by the United States Housing Act of September 1, 1937, c. 896, 50 Stat. 888, 42 U. S. C., Supp. V, sec. 1401 (pp. 12–17, *infra*). That Act merely provides that the United States Housing Authority may make loans (sec. 9), annual contributions (sec. 10), and capital grants (sec. 11) to public housing agencies. While annual contributions and capital grants can only be made for projects which contemplate the elimination of unsafe and insanitary dwellings (secs. 10, 11), there is, under section 9, no such restriction on the power of the United States Housing Authority to make loans. Since the record shows (R. 5–6) and petitioner admits (Pet. 10) that this project is to be financed by a loan, and not by annual contributions or a capital grant, the argument (Pet. 11) that her property is neither unsafe nor insanitary is irrelevant.

3. Petitioner's final contention (Pet. 15–16) is that her answer raises material issues of fact on which she was denied the right to offer evidence. Apart from allegations of want of regularity (R. 36) contradicted by the face of the petition, the only issues of fact raised by the answer related to the health and safety of alley dwellings (R. 38–39) and of petitioner's property (R. 39–40), and are irrelevant to proceedings under Title II. In any event, as the court below also noted, this "argument is general and refers to no particular issue" (R. 57).

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari presents no question of substance and should be denied.

CHARLES FAHY,
Acting Solicitor General.
NORMAN M. LITTELL,
Assistant Attorney General.
WARNER W. GARDNER,
Special Assistant to the Attorney General.
CHARLES R. DENNY,
Attorney.

JULY 1941.

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APPENDIX

The Act of June 12, 1934, c. 465, 48 Stat. 930, as amended by the Act of June 25, 1938, c. 691, 52 Stat. 1186, provides in part as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the first section of the District of Columbia Alley Dwelling Act, approved June 12, 1934, is hereby amended to read as follows:
>
> "TITLE I
>
> SECTION 1. (a) It is hereby declared to be a matter of legislative determination that the conditions existing in the District of Columbia with respect to the use of buildings in alleys as dwellings for human habitation are injurious to the public health, safety, morals, and welfare; and it is hereby declared to be the policy of the United States to protect and promote the welfare of the inhabitants of the seat of the Government by eliminating all such injurious conditions by employing all means necessary and appropriate for the purpose; and control by regulatory processes having proved inadequate and insufficient to remedy the evils, it is in the judgment of Congress necessary to acquire property in the District of Columbia by gift, purchase, or the use of eminent domain in order to effectuate the declared policy by the discontinuance of the use for human habitation in the District of Columbia of

buildings in alleys, and thereby to eliminate the communities in the inhabited alleys in said District, and to provide decent, safe, adequate, and sanitary habitations for persons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings under the terms of this title, and to prevent an acute shortage of decent, safe, adequate, and sanitary dwellings for persons of low income, and to carry out the policy declared in the Act approved May 18,[1] 1918, as amended, of caring for the alley population in the District of Columbia, and to that end it is necessary to enact the provisions hereinafter set forth.

(b) In order to remedy the conditions and evils hereinbefore recited and to carry out the policy hereinbefore declared, the President is hereby authorized and empowered to acquire by purchase, gift, condemnation, or otherwise—

(1) any land, building, or structures, or any interest therein, situated in or adjacent to any inhabited alley in the District of Columbia;

(2) any land, buildings, or structures, or any interest therein, within any square containing an inhabited alley, the acquisition of which is reasonably necessary for utilization, by replatting, improvement or otherwise, pursuant to the provisions of this Act, of any property acquired under subparagraph (1) of this subsection; and

(3) any other land, together with any structures that may be located thereon, in the District of Columbia that may be necessary to provide decent, safe, adequate, and sanitary housing accommodations for per-

[1] So in original.

sons or families substantially equal in number to those who are to be deprived of habitation by reason of the demolition of buildings pursuant to the provisions of this title.

* * * * *

SEC. 2. (a) The President may designate, for the purpose of carrying out the provisions of this Act, such official or agency of the Government of the United States or of the District of Columbia (hereinafter referred to as "the Authority") as in his judgment is deemed necessary or advantageous * * *

(b) In the event condemnation proceedings are required to carry out the provisions of this Act the same shall be conducted in accordance with the provisions of the Act entitled "An Act to provide for the acquisition of land in the District of Columbia for the use of the United States," approved March 1, 1929.

* * * * *

"TITLE II

SEC. 201. As used in this title—

(a) The term "housing project" shall mean any low-rent housing (as defined in the United States Housing Act of 1937), the development or administration of which is assisted by the United States Housing Authority.

(b) The term "development" shall mean any or all undertakings necessary for planning, financing (including payment of carrying charges), land acquisition, demolition, construction, or equipment, in connection with a housing project, but not beyond the point of physical completion.

SEC. 202. In addition to its other powers, the Authority shall have the power to ac-

quire sites for and to prepare, carry out, acquire, lease, and operate housing projects, as defined in section 201 of this title, and to construct or provide for the construction, reconstruction, improvement, alteration, or repair of any such housing project, or any part thereof, in the District of Columbia.

SEC. 203. For the purposes of this title the Authority shall be considered a public housing agency within the meaning of, and to carry out the purposes of, the United States Housing Act of 1937; and as such, the Authority is empowered to borrow money or accept contributions, grants or other financial assistance from the United States Housing Authority for or in aid of any housing project in the District of Columbia, in accordance with the United States Housing Act of 1937, to take over or lease or manage any such housing project or undertaking constructed, owned, or operated by the United States Housing Authority, and to those ends to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable: *Provided,* That the tax exemption of the property of the Authority shall be deemed a contribution by the District of Columbia in accordance with the local contributions requirements of section 10 (a) or section 11 (f) of the United States Housing Act of 1937. It is the purpose and intent of this title to authorize the Authority to do any and all things necessary to secure the financial aid of the United States Housing Authority in the undertaking, construction, maintenance, or operation in the District of Columbia of any housing project by the Authority.

* * * * *

The United States Housing Act of September 1, 1937, c. 896, 50 Stat. 888, 42 U. S. C., Supp. V, sec. 1401, is in part as follows:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
>
> DECLARATION OF POLICY
>
> SECTION 1. It is hereby declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this Act, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in rural or urban communities, that are injurious to the health, safety, and morals of the citizens of the Nation.
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> DEFINITIONS
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> SEC. 2. When used in this Act—
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> (1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing as defined in this Act shall be available solely for families whose net income at the time of admission does not exceed five [1] times the rental (including the value or cost to them of heat, light, water,

[1] So in original.

and cooking fuel) of the dwellings to be furnished such families, except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one.

(2) The term "families of low income" means families who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use.

(3) The term "slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

(4) The term "slum clearance" means the demolition and removal of buildings from any slum area.

(5) The term "development" means any or all undertakings necessary for planning, financing (including payment of carrying charges), land acquisition, demolition, construction, or equipment, in connection with a low-rent-housing or slum-clearance project, but not beyond the point of physical completion. Construction activity in connection with a low-rent-housing project may be confined to the reconstruction, remodeling, or repair of existing buildings.

(6) The term "administration" means any or all undertakings necessary for management, operation, maintenance, or financing, in connection with a low-rent housing or slum-clearance project, subsequent to physical completion.

(7) The term "Federal project" means any project owned or administered by the Authority.

(8) The term "acquisition cost" means the amount prudently required to be expended by a public housing agency in acquiring a low-rent-housing or slum-clearance project.

(9) The term "non-dwelling facilities" shall include site development, improvements and facilities located outside building walls (including streets, sidewalks, and sanitary, utility, and other facilities).

(10) The term "going Federal rate of interest" means, at any time, the annual rate of interest specified in the then most recently issued bonds of the Federal Government having a maturity of ten years or more.

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Authority), which is authorized to engage in the development or administration of low-rent housing or slum clearance.

(12) The term "State" includes the States of the Union, the District of Columbia, and the Territories, dependencies, and possessions of the United States.

(13) The term "Authority" means the United States Housing Authority created by section 3 of this Act.

UNITED STATES HOUSING AUTHORITY

SEC. 3. (a) There is hereby created in the Department of the Interior and under the general supervision of the Secretary thereof a body corporate of perpetual duration to be known as the United States Housing

Authority, which shall be an agency and instrumentality of the United States.

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LOANS FOR LOW-RENT-HOUSING AND SLUM-CLEARANCE PROJECTS

SEC. 9. The Authority may make loans to public-housing agencies to assist the development, acquisition, or administration of low-rent-housing or slum-clearance projects by such agencies. Where capital grants are made pursuant to section 11 the total amount of such loans outstanding on any one project and in which the Authority participates shall not exceed the development or acquisition cost of such project less all such capital grants, but in no event shall said loans exceed 90 per centum of such cost. In the case of annual contributions in assistance of low rentals as provided in section 10 the total of such loans outstanding on any one project and in which the Authority participates shall not exceed 90 per centum of the development or acquisition cost of such project. Such loans shall bear interest at such rate not less than the going Federal rate at the time the loan is made, plus one-half of one per centum, shall be secured in such manner, and shall be repaid within such period not exceeding sixty years, as may be deemed advisable by the Authority.

ANNUAL CONTRIBUTIONS IN ASSISTANCE OF LOW RENTALS

SEC. 10. (a) The Authority may make annual contributions to public housing agencies to assist in achieving and maintaining the low-rent character of their housing

projects. The annual contributions for any such project shall be fixed in uniform amounts, and shall be paid in such amounts over a fixed period of years. No part of such annual contributions by the Authority shall be made available for any project unless and until the State, city, county, or other political subdivision in which such project is situated shall contribute, in the form of cash or tax remissions, general or special, or tax exemptions, at least 20 per centum of the annual contributions herein provided. The Authority shall embody the provisions for such annual contributions in a contract guaranteeing their payment over such fixed period: *Provided*, That no annual contributions shall be made, and the Authority shall enter into no contract guaranteeing any annual contribution in connection with the development of any low-rent-housing or slum-clearance project involving the construction of new dwellings, unless the project includes the elimination by demolition, condemnation, and effective closing, or the compulsory repair or improvement of unsafe or insanitary dwellings situated in the locality or metropolitan area, substantially equal in number to the number of newly constructed dwellings provided by the project; except that such elimination may, in the discretion of the Authority, be deferred in any locality or metropolitan area where the shortage of decent, safe, or sanitary housing available to families of low income is so acute as to force dangerous overcrowding of such families.

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Capital Grants in Assistance of Low Rentals

Sec. 11. (a) As an alternative method of assistance to that provided in section 10, when any public housing agency so requests and demonstrates to the satisfaction of the Authority that such alternative method is better suited to the purpose of achieving and maintaining low rentals and to the other purposes of this Act, capital grants may be made to such agency for such purposes. The capital grants thus made for any low-rent-housing or slum-clearance project shall be paid in connection with its development or acquisition, and shall be strictly limited to the amounts necessary, in the determination of the Authority, to assure its low-rent character: *Provided, however,* That no capital grant shall be made for the development of any low-rent-housing or slum-clearance project involving the construction of new dwellings, unless the project includes the elimination by demolition, condemnation, and effective closing, or the compulsory repair or improvement of unsafe or insanitary dwellings situated in the locality or metropolitan area, substantially equal in number to the number of newly constructed dwelling units provided by the project; except that such elimination may, in the discretion of the Authority, be deferred in any locality or metropolitan area where the shortage of decent, safe, or sanitary housing available to families of low income is so acute as to force dangerous overcrowding of such families.

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The Act of March 1, 1929, c. 416, 45 Stat. 1415, 40 U. S. C. sec. 361 provides in part:

> That whenever the head of any executive department or independent bureau, or other officer of the United States, or any board or commission of the United States, hereinafter referred to as the acquiring authority, has been, or hereafter shall be, authorized by law to acquire real property in the District of Columbia * * *, such acquiring authority shall be, and hereby is, authorized to acquire the same in the name of the United States by condemnation under judicial process whenever in the opinion of such acquiring authority it is necessary or advantageous so to do * * *.

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